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Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Levitt Law, APC ("Levitt Law") represents Our Clean Waters ("OCW"), a non-profit corporation organized under the laws of the State of California. This letter is to give notice that Levitt Law, on behalf of OCW, intends to file a civil action against R & S Processing Co., Inc. ("R & S Processing") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at R & S Processing's Facility located at 15712 Illinois Avenue, Paramount, CA 90723 (the "Facility").

OCW is concerned with the environmental health of the Los Angeles River Reach 2, on behalf of the public that uses and enjoys said Water Bodies, its inflows, outflows, and other waters of the

affected Watershed. The public's use and enjoyment of these waters is negatively affected by the pollution caused by R & S Processing's operations. Additionally, OCW acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses R & S Processing's unlawful discharge of pollutants from the Facility into conveyance channels that discharge into the Los Angeles River Reach 2. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit").¹ The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As appropriate, OCW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." Investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(b)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act Section 505(b), this Notice of Violations and Intent to File Suit provides notice to R & S Processing of the violations that have occurred and which continue to occur at the Facility. Consequently, OCW hereby places R & S Processing on formal notice, that after the expiration of sixty (60) days from the date of this Notice of Violations and the Intent to Sue, OCW intends to file suit in federal court against R & S Processing under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and the General Permit. The violations are described more fully below.

During the 60-day notice period, OCW is willing to discuss effective remedies for the violations noticed in this letter. We suggest that R & S Processing contact OCW's attorneys at Levitt Law within the next twenty (20) days so these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The R & S Processing Co., Inc. ("R & S Processing") Facility is located at 15712 Illinois Avenue, Paramount, CA 90723. The site comprises roughly 2.3 acres of land over two adjacent parcels on opposite sides of Illinois Avenue, approximately 1.5 miles from the Los Angeles River Reach 2. R & S Processing operates as a manufacturer of custom-mixed black and non-black rubber compounds and certifies that the Facility is classified under Standard Industrial Classification ("SIC") code 3069 (Fabricated Rubber Products, Not Elsewhere Classified). R & S Processing

¹ On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial General Permit except for purposes of enforcement actions brought pursuant to the prior permit.

conducts the following industrial activities at the Facility: blending of rubber compounds; shipping and receiving; handling of raw materials and finished rubber products; storing of raw materials and finished rubber products; equipment operation and repair; vehicle operation and repair; handling and storing of hazardous and non-hazardous wastes. At a minimum, R & S Processing utilizes the following industrial materials at the Facility: zinc oxides; carbon black; natural, synthetic, and silicone elastomers; anti-oxidants, anti-ozonants, and anti-degradants; talc, silicas, and clays; oils, plasticizers, and resins; waxes and lubricants; accelerators, activators, and vulcanizing agents; and petroleum hydrocarbons for equipment and vehicle repair and operation. Possible pollutants from the Facility include: pH, Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), Zinc ("Zn"), additional metals, and other pollutants. Storm water from the Facility discharges, via the local storm sewer system and/or surface runoff indirectly into the Los Angeles River Reach 2.

B. The Affected Water

The Los Angeles River Reach 2, and the overall affected Watershed are waters of the United States. The CWA requires that water bodies such as the Los Angeles River Reach 2 and its inflows and outflows meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Los Angeles River Reach 2 include municipal and domestic supply, industrial service supply, ground water recharge, warm freshwater habitat, wildlife habitat, water contact and non-contact recreation. Contaminated storm water from the Facility adversely affects the water quality of the Los Angeles River Reach 2, and the overall Affected Watershed, and threatens the beneficial uses and ecosystems of these waters.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311(a)). Further, it is unlawful to discharge in violation of the terms and conditions of an NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial General Permit in order to lawfully discharge.

R & S Processing has submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the Industrial General Permit since at least 2007 (WDID Number 419I021078). However, information available to OCW indicates that storm water discharges from the Facility have violated the terms of the Industrial General Permit, and have been violating, and continue to violate, the CWA.

Pursuant to Section I.A.8 of the Industrial General Permit, a facility operator must comply with all conditions of the Industrial General Permit. (Industrial General Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."])). Failure to comply with the Industrial General Permit is a Clean Water Act violation. (Industrial General Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial General Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial General Permit renewal application. As an enrollee, R & S Processing has a duty to comply with the Industrial General Permit and is subject to all of the provisions therein.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants² and best conventional pollutant control technology (“BCT”) for conventional pollutants. Industrial General Permit § I(D)(32), II(D)(2); Previous Industrial General Permit, Order Part B(3). Specifically, the Permit “requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards.” (Industrial General Permit §I(D)(32); see also §V.A.). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmark levels are reflected as Numeric Action Level (NAL) values in the current Industrial General Permit (also known as Benchmark values in the Previous Industrial General Permit). These levels are set at the maximum pollutant concentration present to determine if an industrial Facility is employing BAT and BCT. (See Attachment 1 of this Notice for applicable Benchmark Values).³

Additionally, the Previous Industrial General Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. See Previous Industrial General Permit § VIII. The Previous Industrial General Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial General Permit. *Id.* R & S Processing falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the previous Industrial General Permit during its effective period.

R & S Processing’s self-reporting of industrial storm water discharges shows a pattern of exceedances of Benchmarks and NAL values, especially as it pertains to the parameter of Zinc (Zn). The Facility has reported Zinc exceedances as high as 27 times the NAL value in the IGP. This pattern of exceedances of Benchmarks and NAL values indicate that R & S Processing has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit and Previous Industrial General Permit. Self monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

OCW alleges and notifies R & S Processing that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for Zinc. This is especially concerning due to the Affected Watershed being impaired for Zinc. R & S Processing’s ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values, and BAT and BCT based levels of control, also demonstrate that

² BAT is defined at 40 C.F.R. § 437.1 et seq. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ The Benchmark values are part of the EPA’s Multi-Sector General Permit (“MSGP”). See 73 Fed. Reg 56,572 (Sept 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharged From Industrial Activities).

R & S Processing has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

R & S Processing's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day R & S Processing discharges without meeting BAT/BCT. OCW alleges that R & S Processing has discharged storm water containing excessive levels of pollutants from the Facility to the Los Angeles River Reach 2 during significant local rain events over 0.1 inches in the last five (5) years (Attachment 2).⁴ Every significant rain event that has occurred in the last five (5) years represents a discharge of polluted storm water run-off into the Los Angeles River Reach 2. R & S Processing is subject to civil penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The CWA and Industrial General Permit's Discharge Prohibitions disallow storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (2). The Industrial General Permit also prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. See Industrial General Permit, Section VI (b-c); Previous Industrial General Permit Order, Part C (1). Receiving Water Limitations of the Industrial General Permit prohibit storm water discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial General Permit, Section VI (a); Previous Industrial General Permit Order, Part C (2). Applicable WQS are set forth in the California Toxic Rule ("CTR")⁵ and Water Quality Control Plan – Los Angeles Region (Region 4): Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (the "Basin Plan").⁶ Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan.

The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000). See

to reference the Region 4 Basin Plan. The beneficial uses of the Los Angeles River Reach 2 and its tributaries include municipal and domestic supply, industrial service supply, ground water recharge, warm freshwater habitat, wildlife habitat, water contact and non-contact recreation. The non-contact water recreation use is defined as "uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes, but is not limited to, swimming, wading, and fishing. *Id.*

⁴ The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

⁵ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

⁶ The Basin Plan is published by the Los Angeles Regional Water Quality Control Board and can be accessed at

The Basin Plan establishes WQS for all Inland Surface Waters, including the Affected Water Body Watershed, which contain, but are not limited, to the following standards:

- A narrative toxicity standard which states that “all waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38.
- A narrative oil and grease standard which states that “waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29.
- That “waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37.
- That “the pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35.
- That “surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect designated beneficial use.” *Id.* at 3-24.
- That “waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26.
- That “waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25.
- That “waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38.
- That “waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37.

Additionally, the EPA has adopted a freshwater numeric water quality standard for Zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).

OCW alleges that R & S Processing’s storm water discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial General Permit and the WQS set forth in the Basin Plan and CTR, and is clearly in violation of the CWA. These allegations are based on R & S Processing’s self-reported data submitted to the Los Angeles Regional Water Quality Control Board. The sampling results indicate that R & S Processing’s discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS (See Attachment 1). As previously stated, OCW is especially concerned with the high levels of Zinc in the Facility’s storm water discharges due to the Affected Watershed being impaired for Zinc.

OCW alleges that each day that R & S Processing has discharged storm water from the Facility, R & S Processing's storm water has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Los Angeles River Reach 2 and the Affected Watershed. OCW alleges that R & S Processing has discharged storm water exceeding Receiving Water Limitations and/or WQS from the Facility to the Los Angeles River Reach 2 and the Affected Watershed during significant local rain events over 0.1 inches in the last five (5) years (See Attachment 2). Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial General Permit and the CWA. R & S Processing is subject to penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial General Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). See Industrial General Permit, Section X (B); Previous Industrial General Permit, Part A (I) (a) and Provision E (2). The Industrial General Permit also requires dischargers to make all necessary revisions to the existing SWPPP promptly. See Industrial General Permit, Section X (B); Previous Industrial General Permit Order, Part E (2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all R & S Processing pollutant sources, a description of the BMPs that will reduce or prevent pollutants in storm water discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a Facility manager determines that the SWPPP is in violation of any requirements of the Industrial General Permit. See Industrial General Permit, Section X (A); Previous Industrial General Permit, Part A.

Based on information available to OCW, R & S Processing has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements stated in Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit. For Example, R & S Processing's SWPPP does not include and/or R & S Processing has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A (8) of the Industrial General Permit as evidenced by the data in Attachment 1. The Facility's storm water samples have consistently exceeded EPA Benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, R & S Processing has failed to sufficiently update and revise the Facility's SWPPP. The facility's SWPPP has therefore never achieved the Industrial General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

Additionally, based on the most recent version of the SWPPP uploaded to SMARTS on 12/29/2016, OCW further alleges the SWPPP does not meet the requirements of the current Industrial General Permit. At a minimum, the Facility's SWPPP does not satisfy the following requirement: assessment of potential pollutant sources (Section X (G.2.)). Specifically, the SWPPP does not include an assessment of Facility industrial pollutants related to impairments of the Receiving Water Body and the Affected Watershed (303(d) and HUC 10 listed impairments).

Table 3.1 on page E-10 of the SWPPP lists Copper as an associated pollutant for the following Industrial Activities: Shipping & Receiving; Material Handling; and Vehicle Operation & Repair. Although the Los Angeles River Reach 2 and the Affected Watershed are impaired for Copper, the SWPPP does not assess whether the facility should analyze for Copper in its storm water discharges. This example further demonstrates inadequacy of the SWPPP.

Accordingly, R & S Processing has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit, and R & S Processing will continue to be in violation every day until it develops and implements an adequate SWPPP. R & S Processing is subject to penalties for each violation of the Industrial General Permit and the CWA occurring within the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

The Industrial Storm Water Permit requires Facility operators to develop and implement a Monitoring Implementation Program ("MIP"). See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B (I) and Order, Part E (3). The Industrial General Permit requires that the MIP ensures that the Facility adequately detects and measures its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit. *Id.* Facility operators must ensure that their MIP practices reduce or prevent pollutants in storm water and authorized non-storm water discharges as well as evaluate and revise their practices to meet changing conditions at the Facility. *Id.* This may include revising the SWPPP as required by Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit.

The MIP must measure the effectiveness of BMPs used to prevent or reduce pollutants in storm water and authorized non-storm water discharges, and Facility operators must revise the MIP whenever appropriate. See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B. The Industrial General Permit requires Facility operators to visually observe and collect samples of storm water discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the Facility's monitoring program will satisfy these objectives. *Id.*

The Previous Industrial General Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at the facility (1997 Industrial General Permit, § B(5)). The current Industrial General Permit now mandates that facility operators sample four (rather than two) storm water discharges from all drainage locations over the course of the reporting year (2015 Industrial General Permit, §§ XI(B)(2), (3)). Despite these requirements, R & S Processing submitted the Annual Report for the 2013-2014 reporting period with analysis data for only one (1) storm event; the Annual Report for the 2015-2016 reporting period with analysis data for only two (2) storm events; and the Annual Report for the 2016-2017 reporting period with analysis data for only three (3) storm events. Also, the sample dated 2/6/2017 from the 2016-2017 reporting period, did not include the required analysis of Oil and Grease for the Southwest Drain and West Drain sample locations. R & S Processing has failed to adequately explain why there is a lack of required sampling data.

Additionally, prior to the sample dated 1/3/2017, the facility only performed sampling at one of its three discharge locations having exposure to industrial activity. This directly affected R & S Processing's requirement to adequately detect and measure its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit; and to adequately measure the effectiveness of BMPs in place at the Facility.

R & S Processing has been operating the Facility with an inadequately developed and/or inadequately implemented MIP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial General Permit. For example, the data in Attachment 1 indicates that R & S Processing's monitoring program has not ensured that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial General Permit as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in storm water as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. Similarly, the data in Attachment 1 indicates that R & S Processing's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B.

As a result of R & S Processing's failure to adequately develop and/or implement an adequate MIP at the Facility, R & S Processing has been in daily and continuous violation of the Industrial Storm Water Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. R & S Processing will continue to be in violation of the monitoring and reporting requirement each day that R & S Processing fails to adequately develop and/or implement an effective MIP at the Facility. R & S Processing is subject to penalties for each violation of the Industrial General Permit and the CWA occurring for the last five (5) years.

The R & S Processing owners and/or Operators had numerous opportunities to improve the monitoring and reporting program to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit, but failed to do so as required. They are thus subject to penalties in accordance with the Industrial General Permit – punishable by a minimum of \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial General Permit, §XXI.Q.1).

E. Failure to Perform Adequate Annual Comprehensive Site Compliance Evaluations

The 1997 Permit requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to OCW indicates R & S Processing has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, R & S Processing has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

OCW puts R & S Processing on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and CWA. R & S Processing is in ongoing violation of the General Permit every day that the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. Each of these violations is a separate and distinct violation of the General Permit and the CWA. R & S Processing is subject to civil penalties for all violations of the CWA occurring over the past 5 years.

F. Failure to Comply with Level 1 Exceedance Response Action Requirements

As of July 1, 2016, R & S Processing was in Level 1 status for Zinc based on NAL exceedances during the 2015-2016 reporting period. See 2015 Permit, XII.C. R & S Processing completed a Level 1 ERA evaluation on 9/27/2016 and submitted a Level 1 ERA Report to SMARTS on 12/28/2016, as required by Section XII.C.1-2. Although R & S Processing's Level 1 ERA Report includes additional BMPs to implement at the Facility, it fails to identify additional BMPs "necessary to prevent future NAL exceedances at the Facility and to comply with the requirements of [the 2015 Permit]," as evidenced by the fact that sampling results from the 2016-2017 reporting period showed continued exceedances of Zinc. See 2015 Permit, Section XII.C.1.c, XII.C.2.a.ii.

Accordingly, R & S Processing has failed and continues to fail to conduct an adequate Level 1 status evaluation and an adequate Level 1 ERA Report that complies with the 2015 Permit. As such, R & S Processing is in daily violation of the 2015 Permit. Every day R & S Processing conducts operations at the Facility without an adequate Level 1 status evaluation and/or an adequate Level 1 ERA Report, as required by the 2015 Permit, is a separate and distinct violation of the 2015 Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311 (a). R & S Processing has been in daily and continuous violation of the 2015 Permit's Level 1 status ERA requirements every day since at least July 1, 2016. These violations are ongoing. R & S Processing is subject to civil penalties for all violations of the Clean Water Act occurring since July 1, 2016.

G. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by an NPDES Permit issued pursuant to Section 402 of the CWA. See 33 U.S.C. § 1311 (a), 1342. R & S Processing sought coverage for the Facility under the Industrial General Permit, which states that any discharge from an industrial Facility not in compliance with the Industrial General Permit must be either eliminated or permitted by a separate NPDES permit. Industrial General Permit, Section III; Previous Industrial General

Permit Order, Part A (1). Because R & S Processing has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial General Permit, each and every discharge from the Facility described herein, not in compliance with the Industrial General Permit, has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301 (a) of the CWA, 33 U.S.C. § 131 I(a).

III. PERSON RESPONSIBLE FOR THE VIOLATIONS

R & S Processing Co., Inc. ("R & S Processing") is responsible for the violations at the Facility located at 15712 Illinois Avenue, Paramount, CA 90723 as described above.

IV. NAME AND ADDRESS OF NOTICING PARTY

OUR CLEAN WATERS

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VI. REMEDIES

As stated previously, OCW intends, at the close of the 60-day notice period or thereafter, to file suit under CWA section 505(a) against R & S Processing for the above-referenced violations. OCW will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, OCW will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against R & S Processing in this action. **The CWA imposes civil penalty liability of up to \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015, plus attorneys' fees and costs** (33 U.S.C. § 1319(d); 40 C.F.R. § 19.4). OCW will seek to recover such penalties, restitution, attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d). It should be noted that the statute of limitations is five (5) years for citizen enforcement actions brought pursuant to the federal Clean Water Act, bringing potential liabilities for the last five (5) years. Furthermore, actions are allowable under prior expired permits within the five (5) year period. (See *Illinois v. Outboard Marine, Inc.*, (7th Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired

Permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-854 [holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]).

As noted above, OCW and its Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott L. Levitt", with a stylized flourish extending from the end.

Scott L. Levitt, Esq.

ATTACHMENT 1

1. Self-Reported Sampling Conducted by R & S Processing Co., Inc. Demonstrating Non-compliance with BAT/BCT

Date of Sample	Discharge Point	Parameter	EPA Benchmark Value / NAL Value	Sample Value
2/27/2014	Southwest Drain	Zinc	0.26 mg/L	0.93 mg/L
12/2/2014	Southwest Drain	Zinc	0.26 mg/L	2.9 mg/L
5/14/2015	Southwest Drain	Zinc	0.26 mg/L	7.2 mg/L
5/14/2015	Southwest Drain	Oil and Grease	15 mg/L	28 mg/L
5/14/2015	Southwest Drain	Total Suspended Solids	100 mg/L	220 mg/L
12/22/2015	Southwest Drain	Zinc	0.26 mg/L	0.92 mg/L
2/19/2016	Southwest Drain	Zinc	0.26 mg/L	4.9 mg/L
2/19/2016	Southwest Drain	Total Suspended Solids	100 mg/L	170 mg/L
12/16/2016	Southwest Drain	Zinc	0.26 mg/L	3.5 mg/L
1/3/2017	Southwest Drain	Zinc	0.26 mg/L	5.8 mg/L
1/3/2017	Northwest Drain	Zinc	0.26 mg/L	2.6 mg/L
2/6/2017	Southwest Drain	Zinc	0.26 mg/L	1.0 mg/L
2/6/2017	Northwest Drain	Zinc	0.26 mg/L	0.49 mg/L

2. Self-Reported Sampling Conducted by R & S Processing Co., Inc. Demonstrating Non-compliance with Water Quality Standards in the Los Angeles Basin Plan / CTR

Date of Sample	Discharge Point	Parameter	Basin Plan Water Quality Objective / CTR	Sample Value
2/27/2014	Southwest Drain	Zinc	0.120 mg/L (CMC)	0.93 mg/L
12/2/2014	Southwest Drain	Zinc	0.120 mg/L (CMC)	2.9 mg/L
5/14/2015	Southwest Drain	Zinc	0.120 mg/L (CMC)	7.2 mg/L
12/22/2015	Southwest Drain	Zinc	0.120 mg/L (CMC)	0.92 mg/L
2/19/2016	Southwest Drain	Zinc	0.120 mg/L (CMC)	4.9 mg/L
12/16/2016	Southwest Drain	Zinc	0.120 mg/L (CMC)	3.5 mg/L
1/3/2017	Southwest Drain	Zinc	0.120 mg/L (CMC)	5.8 mg/L
1/3/2017	Southwest Drain	pH	6.5 - 8.5 s.u.	6.1 s.u.
1/3/2017	Northwest Drain	Zinc	0.120 mg/L (CMC)	2.6 mg/L
1/3/2017	West Drain	pH	6.5 - 8.5 s.u.	6.4 s.u.
2/6/2017	Southwest Drain	Zinc	0.120 mg/L (CMC)	1.0 mg/L
2/6/2017	Northwest Drain	Zinc	0.120 mg/L (CMC)	0.49 mg/L

The above referenced discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Industrial General Permit; Discharge Prohibitions I(I)(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Industrial General Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Industrial General Permit.

ATTACHMENT 2

Rain Dates, R & S Processing Co, Paramount

Data from KLGB Weather Station - Long Beach Airport (Approx. 4 miles from R & S Processing)

9-12-12 to 9-12-17

Days with Precipitation over 0.1 inch

10/11/2012	3/3/2014	1/7/2016
10/12/2012	4/1/2014	1/31/2016
11/8/2012	4/2/2014	2/17/2016
11/29/2012	4/25/2014	3/6/2016
11/30/2012	9/8/2014	3/7/2016
12/2/2012	10/31/2014	10/17/2016
12/3/2012	11/1/2014	11/20/2016
12/12/2012	11/30/2014	11/21/2016
12/13/2012	12/1/2014	11/26/2016
12/18/2012	12/2/2014	12/15/2016
12/24/2012	12/3/2014	12/16/2016
12/26/2012	12/12/2014	12/21/2016
12/29/2012	12/16/2014	12/22/2016
1/24/2013	12/17/2014	12/23/2016
1/25/2013	1/10/2015	12/30/2016
2/8/2013	1/11/2015	1/4/2017
2/19/2013	1/26/2015	1/5/2017
3/8/2013	2/22/2015	1/9/2017
5/5/2013	3/2/2015 *	1/10/2017
5/6/2013	4/7/2015	1/11/2017
5/7/2013	5/8/2015	1/12/2017
11/20/2013	5/14/2015	1/19/2017
11/21/2013	7/18/2015	1/20/2017
11/29/2013	7/19/2015	1/22/2017
12/7/2013	9/15/2015	2/3/2017
12/19/2013	12/13/2015	2/6/2017
2/6/2014	12/19/2015	2/7/2016
2/27/2014	12/21/2015	2/17/2017
2/28/2014	12/22/2015	3/21/2017
3/1/2014	1/5/2016	4/8/2017
3/2/2014	1/6/2016	5/7/2017